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SID J. WHITE

MAY 18 1991

CLERK SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: PETITION FOR APPROVAL
OF FORMS PURSUANT TO
RULE 10-1.1(b) OF THE
RULES REGULATING THE
FLORIDA BAR

77,205
CASE 77,737

RESPONSE OF HENRY P. TRAWICK, JR. TO PETITION FOR APPROVAL OF FORMS

Respondent HENRY P. TRAWICK, JR. responds to the petition for approval of forms and alleges:

1. Petitioner is a member in good standing of The Florida Bar.
2. Petitioner has no knowledge of the allegations of the petition, except as the allegations appear on the face, but accepts the allegations as correctly reciting what has been done.
3. Respondent notes that the forms have not been submitted to the Civil Procedure Rules Committee even though they deal with civil procedure and it is obvious that a rather complete set of forms for divorce is being submitted.
4. Respondent has tried without success to find out why certain changes from the format of the rules approved earlier by the Supreme Court and appended to the Rules of Civil Procedure have been made and why the forms are internally inconsistent in terminology.
5. Respondent has no quarrel with the concept of providing forms for persons who are to use the simplified dissolution of marriage procedure. The procedure under Rule 1.611(c)(1) limits the use of the forms to actions that will not cause many problems to the courts or the parties. The set of forms now submitted goes far beyond the simplified dissolution procedure. The forms deal with modification, injunctions, child support, discovery and other matters

that are far beyond the concept of simplified dissolution of marriage and beyond the ability of laymen to handle.

6. The form and content of the submittals have a number of formal deficiencies. Respondent will not take the time of the Court to review all of them or to point out the changes in grammar and style that would make the forms simpler and more easily understood. As examples, respondent calls the Court's attention to the following items, selected at random:

- (a) Form 1. The note at the top uses the term dissolution of marriage/divorce. The form itself uses "Petition/Request." Double terminology is not necessary. The public generally thinks of divorces and not of dissolutions of marriage. Respondent submits that the term divorce should be restored. Respondent submits that few persons will be confused by using petition rather than request, but certainly one or the other should be used and not both.
- (b) Forms 3 and 4. If there is any substantial difference between forms 3 and 4, it is not readily discernable. There are typographical errors in form 4, such as "Case" when cash is meant under Item 3 and "society" when security is meant in Item 4.
- (c) Form 7. This is called a response or a counter petition, depending on circumstances. While response may be satisfactory, answer would not be a problem. There is no such thing as a counter petition in civil procedure. It is a counterclaim. See Rule 1.170. Respondent submits that no one will be misled by using the term counterclaim.
- (d) The form of verification used in the various documents is inconsistent and obsolete. Some of them do not have reference to the authority before whom the oath is taken; some have the affiant depose and say; some have the affiant certify; some say the information is true and correct; some say it is true and correct to the best knowledge and belief of the affiant; some say that the affidavit is under the penalty of perjury (totally unnecessarily); and, worst of all, the answers to interrogatories are acknowledged, not verified as required by Rule 1.340(a).

- (e) Form 29. This form not only contains the notice of service required by the rule, but also the interrogatories themselves. Respondent has called some of the deficiencies in the interrogatories to the attention of this Court and to various committees in the past. Since the proposal is now to use this form for laymen, respondent submits that it is time to make the form as simple as possible, to avoid ambiguity and repetitive effort. First, the interrogatories are not questions. They are all statements or demands. Second, like "string citations," some of the interrogatories have subparts that run on endlessly. These are often overlooked in answering the interrogatories because it is confusing in format. It is though the writer never heard of subparts or subparagraphing. The financial affidavit of Rule 1.611(a) is required to be attached. That form contains much of the financial information sought in the other interrogatories. The command of Rule 1.010 is clearly ignored. Perhaps the answer is to require the financial affidavit with the initial pleading and with the answer insofar as timeliness is concerned. Certainly, it is pointless to ask the questions about current income, assets, expenses and liabilities in the interrogatories and again in the financial affidavit. Indeed, some of the interrogatories ask for information given by other interrogatories. Because of the strings of items some of the "interrogatories" are obscure or ambiguous. Respondent submits there is no reason why the interrogatories cannot be framed in the format attached. If an attempt is being made in the present format to conceal the fact that the interrogatories exceed the number permitted in the rule, no one is being misled.
- (f) In addition to the use of double terms with a slash mark between them (reminiscent of the terminology differences between common law and chancery), obsolete terms are used; such as hearing when trial is meant.

Summarizing, the forms have not been carefully proofread; they have not been reviewed for internal consistency; they do not use standard terminology; in some instances they are more confusing than they need to be, even when a statute does not require it; there is much unnecessary legal language; and the forms are not ready for presentation to the public.

7. Some of the forms have been devised with a view to be used generally and not by laymen for access to the courts. For some years the Family Law Section has believed that it needs its own set of practice and procedure rules and forms because of the peculiar nature of its litigation. Respondent does not agree. Respondent believes that some special facets of family law require a different treatment, but basically family law litigation can operate within the parameters of other civil litigation.

8. Respondent understands from the petition that the rules are to be followed by a manual telling some laymen how to instruct other laymen in the use of the forms. Respondent does not believe that this court intends to reduce pleading to marking x's and completing blanks. The intent was to simplify procedures so that persons seeking divorces in certain categories who did not require professional legal assistance could do so. A review of the index itself will show how far beyond this concept the forms go. Indeed, The Florida Bar intends to have a special type of summons, a new 45 day procedure to perfect service, instead of the current 120 days, and an affidavit for service by publication to be used by laymen. Perhaps the nature of divorce is such that many of the problems inherent in service by publication are not present. But there is a large body of law that any person using constructive service needs to be familiar with in conducting a diligent search and inquiry. Respondent believes the manual to be presented later by The Florida Bar will be a fascinating discourse.

9. The use of these forms will impose a significant burden on circuit judges in handling divorces. The judges say they are already an overburdened class. It can be difficult enough for a circuit judge to process any civil action when one of the parties represents himself or herself. The judge then has to become part advocate while remaining all judge - a difficult situation at best and one that is not usually performed competently. When the circuit judge has to become the advocate for both parties, and in a divorce, and still retain his judicial impartiality, the system is going to break. In a sense of the word, lawyers are the lubricant that smoothes the path of the judicial machinery. Any trial judge can say how difficult it is to operate without the lubricant, even when the lubricant may not be the best.

Respondent recommends that:

- A. the concept for which divorce forms are to be used by laymen be limited to the situations covered by the current simplified procedure.
- B. the forms be reviewed by the Civil Procedure Rules Committee before promulgation.
- C. the concept and the forms be submitted to the Circuit Judges Conference for review and comments before promulgation.
- D. the forms be rewritten to use uniform terminology throughout, standard verifications, less complex formats and proper style and grammar.

The undersigned certifies that a copy of the foregoing has been furnished to James Fox Miller as president of The Florida Bar; Benjamin H. Hill, III as president-elect of The Florida Bar; John F. Harkness, Jr. as executive director of The Florida Bar; Robert M. Sondak as chairman of the Board Committee on Access to the Legal

Interrogatories; dissolution of marriage

1. What is the name and address of each of your present employers?

2. What is the name and address of each of your employers for the past five years, excluding any present employers?

3. What position and duties have you had for each position for each of the employers named?

4. What is your date of birth?

5. (a) Have you been engaged in any business, commercial or professional activity within the past five years?

(b) If so, what is the name and address of each business or activity?

(c) What is the name and address of all other persons or entities having an interest in each business or activity.

6. (a) Do you receive any benefits from your employment, including but not limited to, use of an automobile or automobile allowance; health, life, or other insurance; expense accounts; telephone expenses; reimbursement for travel, pension or profit sharing; food or lodging; or memberships in any clubs or associations?

(b) If so, what are the items that you receive with the approximate amounts paid to you or for your benefit?

7. (a) What education have you had after high school, including vocational or specialized training?

(b) What is the name of each educational institution you attended, giving the dates of attendance or training?

(c) What degrees or certificates have you obtained from each educational institution?

(d) What work skills do you presently possess?

8. (a) What was your gross annual income, whether earned, passive or investment income, for each of the last five years, including capital gains?

(b) What is the source of each item of income and the amount?

9. What is the legal description of any real property in which you have an interest or that you own, use or hold under a deed, lease or contract?

10. For each parcel of real property given in answer to the preceding interrogatory, what:

(a) Was the date of acquisition?

(b) Was the purchase price?

(c) Is the present market value?

(d) Is the net equity?

(e) Was the market value on the date of separation?

(f) Was the market value on the date of filing the petition for dissolution of marriage?

(g) Was the interest you hold?

(h) Are the names and addresses of any other person or entities holding any interest in the property?

11. (a) What items of tangible personal property, including but not limited to, motor vehicles, furniture, boats, collectibles, or art objects are owned by you or in which you have an interest, excluding personal effects and items having a value less than \$500.00?

(b) What is your estimate of the value of each item?

(c) What are the names and addresses of any person who owns an interest with you in the items, describing the interest?

12. (a) What intangible personal property is owned by you or in which you have an actual, vested or contingent interest or had within the last five years, including but not limited to partnership and business interests, goodwill, stock, bonds, receivables, choses in action and debts owed to you by another entity or person?

(b) What is the percentages of your interest?

(c) What is the present value of your interest?

(d) What is the amount you claim is owed in the choses in action and debts?

(e) What are the names and addresses of the persons or entities owing you the debts or against whom you are claiming a chose in action?

13. (a) What policies of insurance are held or owned by you or in which you have an interest?

(b) If the owner is someone other than you, what is the name and address of each person or entity?

(c) What is the name of the company issuing each policy?

(d) For each policy what is the number of the policy, the type of insurance and the date of acquisition?

(e) For any life insurance or annuity policies, what is the face value, cash surrender value, loan value and beneficiary of each policy?

(f) What is the amount and nature of any loan against any life insurance or annuity policy?

14. (a) Are you the beneficiary of any estate, trust, insurance policy or annuity?

(b) If so, what is the nature and amount of each of the benefits and the value of the interest?

(c) Is the interest vested or contingent for each item?

15. (a) Have you established a trust?

(b) If so, what is the date the trust was established?

(c) What are the names and addresses of the trustees?

(d) What are the names and addresses of the beneficiaries?

(e) What are the names and addresses of the persons who have possession of the trust documents?

(f) What assets are included in the trust?

(g) What is the fair market value of each asset?

16. (a) Are you an owner or a participant or alternate payee in any pension, profit sharing, deferred compensation or retirement plan?

(b) What is a description of the type of plan, whether profit sharing, defined benefit, defined contribution, IRA, Keogh or other?

(c) What is the account balance of any money held for your benefit or to which you are entitled and your accrued monthly benefit?

(d) What is the location and last valuation date of the asset, the amount currently vested and the schedule of vesting?

(e) What is the precise name of the plan and the name and address of the plan administrator or trustee?

(f) What is an itemization of any loans that you have made against the plan for the last five years, the outstanding balance of the loans, and the amounts of the loans?

(g) Have you made any loans against the plan for the past five years?

(h) If you have made any loans, what is the outstanding balance of the loan and the original amount of the loan?

17. (a) During the past five years have you prepared any financial statements, loan applications, or any other list of your assets and liabilities?

(b) For each item what is the date of preparation?

(c) What is the purpose for which each item was prepared?

(d) What is the name and address of the person who prepared each item?

(e) What is the name and address of any financial institution that any of the items were given to?

18. (a) What are the names, addresses and telephone numbers of your accountant and other persons who are in possession of your financial records?

(b) Which records are in the possession of each person listed?

19. (a) What is the location of any safe, vault, or any other similar depository and the name and address of any bank or other depository in which you have a safe deposit box, or on which you are a signatory, co-signatory, or have access to or have maintained property in, at anytime from one year before the year of filing the petition in this action to date?

(b) What is the name and address of each person who has had access to each depository during the same time periods?

(c) What items have been removed during the depository during the same time?

(d) What is the present location of each item removed and the fair market value of each?

(e) What is a current inventory of the contents of each depository and the fair market value of each item on the inventory?

20. (a) What other assets do you own, have an interest in or have the use and benefit of?

(b) What is your interest in each?

(c) What is the value of each?

(d) What is the date of acquisition of each?

(e) What is the name of the person from whom the asset was received?

(f) What was the value on the date acquired?

(b) If so, what is the name of the person?

(c) What is the name and address of all health care providers involved in the treatment of the person?